Department of Community Planning and Economic Development - Planning Division

Waiver from Moratorium Application BZZ-5652

Date: August 23, 2012

Applicant: France 44, LLC, Attn: Scott Carlston, 11200 W. 78th Street, Eden Prairie, MN 55344, (612)

889-7898

Address of Property: 4525, 4529, 4537 and 4541 France Avenue South

Project Name: France Avenue Apartments

Contact Person and Phone: Mohagen Hansen Architectural Group, Attn: Todd Mohagen, 1000 Twelve

Oaks Center Drive, Suite 200, Wayzata, MN 55391, (952) 426-7401

Planning Staff and Phone: Becca Farrar, Senior Planner (612) 673-3594

Date Application Deemed Complete: July 26, 2012

End of 60 Day Decision Period: September 24, 2012

Ward: 13 Neighborhood Organization: Linden Hills Neighborhood Council

Existing Zoning: C1 (Neighborhood Commercial) district, R5 (Multiple-family) district and R2B (Two-

family) district

Reason for Waiver:

To allow a 60 unit, multi-family residential building on the properties that varies in height from two to four stories and has a floor area ratio (FAR) of more than one and seven-tenths (1.7).

Background:

The City Council has approved a moratorium on large-scale development within Neighborhood Commercial Nodes and along Community Corridors in the Linden Hills Neighborhood. More specifically, the moratorium applies to zoning approval, building permits, construction permits, or administrative waivers for building construction with a floor area ratio (FAR) of more than one and seven-tenths (1.7) and/or building construction that exceeds the maximum height permitted as of right under the city's zoning ordinance, in the geographic areas with frontage on the following streets: Upton and Sheridan Avenue South between West 42nd Street and West 45th Street; West 43rd Street between Linden Hills Boulevard and Vincent Avenue South; West 44th Street between Upton Avenue South and France Avenue South; France Avenue South between Glendale Terrace and West 47th Street. The subject parcels are located in the referenced area and meet the above listed criteria; therefore, the proposed development is subject to the restrictions of the moratorium and requires an approved waiver from the City Council to move forward with entitlements for the project.

The interim ordinance (Chapter 588) was introduced at the March 30, 2012, City Council meeting, referred to the Z & P Committee meeting for a public hearing held on May 3, 2012, and forwarded to the May 11, 2012, City Council meeting for final approval.

Property Information:

The subject site includes several parcels including 4525, 4529, 4537 and 4541 France Avenue South. When combined, the property totals 31,684 square feet in area. There are existing structures on the property that have a collective total of 26 units (one single-family, one 15-unit and two 5-unit buildings). The applicant has indicated that the intent is to remove all existing structures to allow for the construction of a 60 unit, multi-family residential building that varies in height from two to four stories and has a floor area ratio (FAR) of 2.3.

There have been two recent development proposals for the site. In October of 2011, one of the parcels, 4525 France Avenue, received approval (BZZ-5280) for a 3-story, 42-foot tall, six unit mixed-use development that included 1,000 square feet of ground level commercial space. The specific land use applications that were approved included: (1) conditional use permit to allow 6 dwelling units; (2) variance of the front yard setback requirement along the west property line adjacent to France Avenue South for the first 40 feet from south to north from 15 feet to 0 feet at the closest point to allow a new mixed-use development; (3) variance of the interior side yard setback requirement along the south property line due to a side residential entrance that faced the lot line; (4) variance to allow surface parking within 6 feet of a dwelling unit; and (5) site plan review.

Following approval of that development proposal, in early March of 2012, prior to the introduction of the moratorium, the applicant submitted an expanded proposal (BZZ-5503) that encompassed the subject properties located at 4525, 4529, 4537 and 4541 France Avenue South. The proposal was to construct a new 4-story, 56-foot tall, mixed-use development that included two 2,960 square foot ground level neighborhood serving retail sales and services uses and 62 dwelling units that required the following land use applications: (1) a petition to rezone the subject properties from the C1 (Neighborhood Commercial), R5 (Multiple-family), and R2B (Two-family) districts to the OR2 (High Density Office Residence) district; (2) variance of the front yard setback requirement along the west property line adjacent to France Avenue South from 15 feet to 10 feet for the building and to allow encroachments in the required front yard; (3) variance of the interior side yard setback requirement along the north property line due to a side residential entrance that faces the lot line from 15 feet to 11 feet; (4) variance to allow two neighborhood serving retail sales and service uses greater than 2,000 square feet at 2,960 square feet; and (5) site plan review. Notwithstanding Staff's recommendation, the development proposal was denied by the Planning Commission in April of 2012. The Planning Commission based the denial on the following findings for the rezoning petition: (1) does not conform to the Comprehensive Plan; (2) it is too radical of a departure from the existing zoning in the area; (3) does not contribute to the general welfare or public benefit; (4) it is outside of the neighborhood commercial node; and (5) there are reasonable uses for the property under the existing zoning designations. The remainder of the applications was denied on the basis of the following finding: (1) with denial of the rezoning, the development cannot be accomplished as proposed.

The decision of the Planning Commission, with the exception of the rezoning, was initially appealed on behalf of the developer by Michael Norton, legal counsel, on May 2, 2012. On May 16, 2012, legal counsel submitted a letter withdrawing the appeal and the associated rezoning application for the site.

Proposal:

The applicant is applying for a waiver of the moratorium restrictions on large-scale development within Neighborhood Commercial Nodes and along Community Corridors in the Linden Hills Neighborhood. Based on the overall proposal, the project is subject to the restrictions of the moratorium. According to

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the submitted plans, the following land use applications would be required in the event that a waiver from the moratorium is approved:

- A rezoning to unify the underlying properties from the C1 (Neighborhood Commercial) district, R5 (Multiple-family) district and R2B (Two-family) district to the R5 (Multiple-family) district;
- Variance of the front yard setback along the west property line adjacent to France Avenue South from 15 feet to 10 feet for the building and to allow various encroachments;
- Site plan review for a new 60-unit, 2-4 story multi-family residential structure.

Additional applications may be identified upon submission of a formal land use application should the waiver be approved.

Neighborhood Review:

The applicant notified the Linden Hills Neighborhood Council and Ward 13 Council Member Betsy Hodges on July 12, 2012. Correspondence from neighborhood residents received to date is included in the packet. Any additional information received will be forwarded to the Committee prior to the public hearing.

Hardship:

In the narrative submitted by the applicant, it is stated that the hardship present in this circumstance is two-fold based on: (1) substantive and procedural due process; and (2) substantial hardship.

Regarding substantive and procedural due process, the applicant basically states that the developer withdrew an appeal that was filed on a previous proposal for the site (BZZ-5503) that was not subject to the moratorium in order to address the substantive comments received from the Planning Commission and neighborhood residents concerning height and the ground level commercial component of the project. Once that appeal and the corresponding project was withdrawn, any new project submission is considered a new project and due to the proposed height and FAR is subject to the restrictions of the moratorium. The applicant contends that "as a matter of fundamental fairness, and to accord the developer reasonable due process, the developer should be granted a waiver because the project is exempt from the moratorium because it relates back to the original exempt proposal".

Regarding substantial hardship, the applicant notes that the developer has incurred substantial costs to assemble the land, to design the initial project and the proposed project as well as the associated architectural, legal, and consultant costs to proceed through City processes over the past 10 months. In addition, the applicant cites holding and management costs as a hardship. The applicant also states that the project is generally within the zoning height limitations allowed as of right on each of the existing zoning lots and that under the moratorium, the developer is prohibited from developing any economically viable multi-family residential project on any of the lots either individually or collectively because of the 1.7 FAR limitation despite their belief that it is consistent with the *Minneapolis Plan for Sustainable Growth* and the Zoning Code. Lastly, the applicant argues that there has been little substantive work commenced to date by the neighborhood to start the small area planning process and that given the timeframe and issues that need to be addressed, it is possible that the study will not be completed in the one year timeframe; therefore lacking the justification to delay the project and the lost investment costs to the developer.

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Findings:

Section 529.50 of the Zoning Code states that, "a waiver may be granted where the City Council finds substantial hardship caused by the restrictions and finds that the waiver will not unduly affect the integrity of the planning process or the purpose for which the interim ordinance is enacted."

Based on the information submitted, Staff finds that a substantial hardship is caused by the restrictions of the ordinance and further believes that the City's regulatory framework and procedural processes are more than adequate to address any requested entitlements for the properties moving forward. While the moratorium covers a broad geographic area, the initial impetus for the adoption of the moratorium in this neighborhood was the type of development represented by the proposed Linden Corner development located at West 43rd Street and Upton Avenue South. While the study area encompasses the proposed development site, Staff finds that approving the waiver and allowing the developer to proceed with land use applications would not be in conflict with the purpose for which the interim ordinance was enacted as ample opportunities would be afforded to all neighborhood residents to share their perspectives on the development in public hearings, and ultimately the decision lies with the City Council and the policies that are adopted.

Should the waiver be approved, there is no guarantee that the associated land use applications would receive approval, thus allowing for the proposed development. Approving the waiver merely allows the developer to proceed through the standard land use application process. The specific analysis of the development and its consistency or lack thereof with adopted policies and plans would be evaluated as part of this process.

Interference with the purposes of the moratorium:

As previously noted, the City Council is concerned that large-scale developments could negatively affect the established character within the Linden Hills Neighborhood's Commercial Nodes, along its Community Corridors, and in close proximity to these land use features. The interim ordinance was adopted to protect the health, safety and welfare of the citizens. The neighborhood and the City have begun the process of establishing a small area plan. The status of the planning process to date is that the neighborhood has been moving forward with all of the necessary elements to develop the plan, which begins with the selection process of the steering committee, the development of a project scope, a request for proposals and the consultant selection process. More specifically, on July 17, 2012, the Linden Hills Neighborhood Council (LHiNC) appointed a steering committee for the Linden Hills small area planning process. A nominating subcommittee of the LHiNC Board reviewed the 27 applications that were received by the May 25, 2012, application deadline. After completing interviews, the nominating committee identified 15 members and 3 alternates for the steering committee. The steering committee will develop a draft scope for the small area plan over the course of three meetings to be facilitated by CPED. This scope will be reviewed and discussed in a public open house on Sunday, September 23, 2012. From there, the scope will be finalized and a decision made on moving forward with the plan and issuing a request for proposals for a professional services contract to undertake the development of the small area plan. The planning process is tentatively scheduled to start at some point in January of 2013, approximately 3 months before the end of the moratorium as the moratorium was effective as of the date of subject matter introduction on March 30, 2012, and is in effect for one year from that date.

The concern regarding large-scale developments and the effects on the established character within Linden Hills initially spurred from the type of development represented by the proposed Linden Corner development, which was ultimately denied by the City Council. Planning Staff believes that the

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appropriate regulatory framework exists through the standard land use application process to evaluate whether the proposed development would affect the established character within Linden Hills. As previously noted, approving the waiver is not an endorsement of the project, yet it is an endorsement of the establish City processes that govern land use decisions. Given the anticipated timeframe whereas the LHiNC would begin the planning process in January of 2013, it is unlikely that any small area plan would be fully developed or adopted for the area prior to the expiration of the moratorium on March 30, 2013.

Recommendation of the Community Planning and Economic Development Department - Planning Division:

The Community Planning and Economic Development Department - Planning Division recommends that the City Council adopt the above findings and <u>approve</u> the waiver application to allow the applicant to proceed with the submittal of land use applications for a 60 unit, multi-family residential building on the properties that varies in height from two to four stories and has a floor area ratio (FAR) of more than one and seven-tenths (1.7) on the properties located at 4525, 4529, 4537 and 4541 France Avenue South within the boundaries of the moratorium on large-scale development within Neighborhood Commercial Nodes and along Community Corridors in the Linden Hills Neighborhood.

Attachments:

- 1. Statement of proposed use and statement of hardship
- 2. Correspondence including notification sent to Ward 13 and Linden Hills Neighborhood Council
- 3. Zoning Map
- 4. Plans Civils, site plan, landscape, floor plans, elevations, renderings
- 5 Photos
- 6. Neighborhood correspondence